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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/798,936	03/11/2004	Kenneth A. Chupa	AUS920031075US1	6909				
7590 Barry S. Newberger P.O. Box 50784 Dallas, TX 75201	10/30/2007		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">LEE, MARINA</td></tr></table>		EXAMINER		LEE, MARINA	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/798,936

Applicant(s)

CHUPA ET AL.

Examiner

Marina Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on March 11, 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date March 11, 2004
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. This action is responsive to the application filed on March 11, 2004.
2. Claims 1-20 are pending and have been examined.

#### ***Priority***

3. Application filing date (March 11, 2004) is considered the priority date.

#### ***Drawings***

4. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because on *FIGURE 1*, *EJB architecture 100 is mentioned*, however there is no (number) 100 is labeled anywhere on the *FIGURE*. Further more, *Figure 1*, *Fig. 2A*, and *Fig. 2B* are all informal and/or handwriting/drawing. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepare

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new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Specification***

5. The abstract of the disclosure is objected to for content:

on line 9, "if tan interface" should be changed to —"if an interface"—, and at the bottom of line 15, the word "AUSTIN\_1\241189\2...." should be removed, as it does not seem to pertain to the subject matter of the invention.

Appropriate Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

7. Claims 15-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As to claim 15 recites, "A data processing system for selectively deploying enterprise software comprising: circuitry operable for, for each deployable software component... circuitry operable for, if the comparing operation... circuitry operable for deploying each tagged...." does not comprise a readable medium or computer component (no physical transformation) in order to realize the functionality of the apparatus. The "system" without such a computer system and /or computer readable storage medium may be broadly interpreted as data structures representing descriptive material per se or computer programming

representing computer listing per se – functional descriptive material under 35 USC § 101. See MPEP 2106.01(I).

Claims 16-20 recite the limitations that do not cure the deficiency of the base claim 7, which regarding to the rejection of non-statutory under 35 USC 101. Therefore, they are also rejected for not meeting that statutory under 35USC 101.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 2, 4, 7-9, 11, 14-16, and 18 are rejected under 35U.S.C. 102(e) as being anticipated by Garms et al., (hereinafter – Garms), (U.S. Patent Application Publication No. 2004/0230942).

**As per claims 1, 8, and 15**, Garms discloses a method for selectively deploying enterprise software comprising:

for each deployable software component (e.g., EJB or WEB , Fig. 1 ) in an preselected input archive file (e.g., EJB module 1, Fig. 1 – see page 3, [0020]), comparing interfaces for the deployable software component identified in a first

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descriptor file in said input archive file and a second descriptor file in a preselected output archive file (see page 3: [0021]);

if the comparing step miscompares for a first deployable software components, tagging said first deployable software component (see page 3: [0022] and [0023]);

if comparing step miscompares for a second deployable software component, tagging said second deployable software component (see page 3:[0022] and [0023]); and

deploying each tagged deployable software component(see page 3: [0024]).

**Further regarding to claim 8**, Garms discloses a computer program product embodied in a machine-readable medium (see [0007]&[0010]) for implementing method of claim 1 addressed above.

**Further regarding to claim 15**, Garms discloses a data processing system (see [0007]&[0010]) for selectively enterprise software for implementing the method of claim 1 addressed above.

**As per claims 2, 9, and 16**, Garms further discloses wherein tagging a deployable software component comprises storing a name of the deployable software component in a file (e.g., Deployment Descriptor such as application.xml and web-logic-application.xml– see pages: 4-5, [0050]-[0053]).

**As per claims 4, 11, and 18**, Garms discloses further comprising:

if the first descriptor file and second descriptor file compare for the first deployable software component, introspecting a binary class file for the first

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deployable software component in the input and output archive files (see page 4: [0031] & [0032]); and

if, in response to the introspection, a signature or return type of an interface of said binary class files miscompare, tagging the first deployable software component (see page 4: [0033] & [0034]).

**As per claims 7 and 14**, Garms further discloses wherein the comparing, tagging and deploying steps are performed in response to an execution of a build script invoking a selective deployer utility (e.g., each time the developer modifies the configuration of the application, changes can be immediately deployed to the server – automatically implement (emphasis added)). –See (page 3, [0006] & [0007]).

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garms et al., (hereinafter – Garms), (U.S. Patent Application Publication No. 2004/0230942), and view of Lagergren (U. S. Patent No. 6,964,042 B2).

As per claims **3, 10, and 17**, it is noted that Garms does not specifically discloses further comprising: if the first descriptor file and second descriptor file

compare for the first deployable software component, comparing a size of a binary class file for the first deployable software component in the input and output archive files; and if the size of said binary class files miscompare, tagging the first deployable software component. However, Lagergren, in an analogous art, teaches optimizing iterative code using adaptive or dynamic size metric. The dynamic size metric may be calculated both for a set of predetermined factor (together with associated weights, and also for a set of variable factors determined during the runtime code introspections process. The predetermined factors, and their associated weights, may be varied to reflect the overall performance of the code in each optimization instance (see Lagergren, title, abstract, steps 30-31 of Fig. 4, col. 5: 26-67, and col. 6: 1-9).

It would have been obvious to one of ordinary skill in the art at the time invention was made to have been motivated to apply optimizing iterative code using adaptive or dynamic size metric of Lagergren in incremental deployment process of Garms code optimizing performance of particular module environment (e.g., EJB, Web). –See (*Lagergren*, col. 2: 10-20).

12. Claims 5, 6, 12, 13, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garms et al., (hereinafter – Garms), (U.S. Patent Application Publication No. 2004/0230942), and view of Kovacs et al., (hereinafter – Kovacs), (U.S. Patent Application Publication No. 2004/0158571 A1).

**As per claims 5, 12, and 19**, it is noted that Garms does not expressively disclose further comprising: opening said preselected output archive file; and if



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the step of opening the preselected output archive fails, tagging each deployable software component in the input archive file. However, Kovacs, in an analogous art, teaches validate deployment descriptor information (i.e. validator 302) to locate errors within deployment descriptor files (e.g., incorrect CMP field name, etc.) by displaying or highlighting the error message to the user. –See (Kovacs, 302, Fig. 3, and page 2, [0020] & [0021]).

It would have been obvious to one of ordinary skill in the art at the time invention was made to have been motivated to apply error validator 302 of Kovacs in deployment descriptor of Garms for assisting developers in user friendly interface (e.g., pop-up window) to identify the input errors and offer the suggesting solution to those errors (see Kovacs, page 2, [0021]).

**As per claims 6, 13, and 20**, Kovacs further discloses wherein the sep of tagging each deployable software component is performed in response to the stop of opening the preselected output archive throwing an exception (see Kovacs, page 2, [0020]&[0021]).

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to application disclosure.

Charisius et al. (US 2002/0104071 A1) is cited to teach supporting deploying distributed computing components.

Knutson. (US 6,557,100 B1) is cited to teach fastpath redeployment of EJBs.

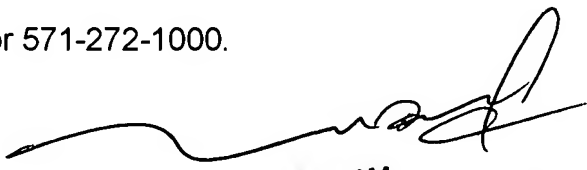
Apte et al. (US 6,269,373 B1) is cited to teach persisting a container-managed server object or bean in a distributed data processing system.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lee whose telephone number is (571) 270-1648. The examiner can normally be reached on M-F (11:00 am to 7: 30 pm) Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.L.  
October 18, 2007



TUAN DAM  
SUPERVISORY PATENT EXAMINER